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## Select Committee on Indian Affairs 1983-84 Activities

A Report to the 49th Legislature

December 1984

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SELECT COMMITTEE ON INDIAN AFFAIRS:  
1983 - 1984 ACTIVITIES

A REPORT TO THE 49TH LEGISLATURE

November 1984

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F. LC 109 (creating a legislative committee on Indian affairs; providing for the committee's termination in 1991; appropriating funds for the committee)	



## SUMMARY OF RECOMMENDATIONS

The 1983-84 Select Committee on Indian Affairs recommends that the 49th Montana Legislature consider enacting:

- 1) a bill revising the requirements concerning filing of a state-tribal cooperative agreement and removing the requirement for gubernatorial approval of an agreement involving a state agency (LC 35);
- 2) a bill clarifying limitations on permissive subject matter of state-tribal cooperative agreements (LC 25);
- 3) a bill providing for a 2-year extension of the existence of the Reserved Water Rights Compact Commission; providing for federal approval of a compact only if legally necessary; requiring that the terms of a compact set forth in a preliminary decree be reproduced unchanged in the final decree; and extending from 60 days to 6 months the time period for filing in water court claims unresolved by the Compact Commission (LC 37);
- 4) a bill permitting the Board of Land Commissioners to exchange state lands located within or adjacent to Indian reservations for land owned by tribal governments, and permitting the Board to sell state lands located within or adjacent to Indian reservations to tribal governments (LC 122); and
- 5) a bill creating a legislative committee on Indian affairs; providing for the committee's termination in 1991; and appropriating funds for the committee (LC 109).



## HOUSE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING ASSIGNMENT OF A SELECT COMMITTEE ON INDIAN AFFAIRS.

WHEREAS, there are seven Indian reservations and numerous landless Indians in Montana; and

WHEREAS, the various tribes have treaties with the United States that are subject to continual interpretation; and

WHEREAS, extremely complex jurisdictional, social, political, and philosophical questions arise in virtually all subject areas, including law enforcement, pollution control, natural resources, game management, health, social services, education, and taxation, which in turn produce tension and conflict in tribal/state and Indian/non-Indian relations; and

WHEREAS, Congress, as the ultimate authority on relations with the Indian tribes, has not been able to act in a decisive manner to resolve these questions and is unlikely to do so in the foreseeable future; and

WHEREAS, jurisdictional litigation on a case-by-case basis is expensive to the state, tribes, and private parties; and

WHEREAS, the jurisdictional, social, and philosophical problems between Indians and non-Indians are historical and cannot be expected to dissipate quickly; and

WHEREAS, the non-Indian people of Montana find it is to their benefit to have a cooperative and communicative liaison with the Indian people in Montana; and

WHEREAS, the Indian people in Montana have indicated it is also to their benefit to have a legislative committee with which to maintain such a cooperative and communicative liaison.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the President of the Senate and the Speaker of the House appoint four members of the Senate and four members of the House, equally bipartisan, to serve on a select legislative committee on Indian affairs.

(2) That the committee, at its initial, organizational meeting, decide specific topics of study to pursue.

(3) That the committee seek opinions of and information from Indian tribes, Indian tribal organizations, state agencies, local governments, non-Indians living on or near Indian reservations, and other interested persons and agencies to gain insight into Indian/non-Indian relations.

(4) That the committee hold hearings to promote better understanding between the tribes and public agencies and to improve the Indian peoples' knowledge of the structure of state agencies and the legislative process.

(5) That the committee encourage and foster participation of Indian people at its meetings.

(6) That the committee act as an available liaison between the Indian people and the Legislature.

(7) That the committee encourage tribal/state and tribal/local government cooperation and otherwise promote amicable Indian/non-Indian relations.

(8) That the committee keep informed of cooperative agreements being negotiated and entered into through the mechanism provided for in Title 18, chapter 11, MCA, or otherwise.

(9) That the Legislative Council provide staff to assist the committee.

(10) That the committee report its activities, findings, and recommendations and any proposed legislation to the 49th Legislature.



## I. INTRODUCTION

With passage of House Joint Resolution No. 19 (HJR 19), the 1983 Montana Legislature authorized appointment of the Select Committee on Indian Affairs. Support for establishing this eight-member legislative panel, the fourth in a series of interim committees on Indian affairs, was substantial. House members voted 91 to 5 in favor of HJR 19, while the Senate adopted the resolution on a 43 to 3 vote. Under the mandates of HJR 19, the Committee was directed to perform a number of tasks including holding hearings to promote better understanding between the tribes and public agencies, acting as an available liaison between the Indian people and the Legislature, and encouraging tribal/state and tribal/local government cooperation. The Legislature appropriated \$7,000 for committee operations.

The committee met for the first time in August 1983. The legislators, following discussions with the Montana Inter-Tribal Policy Board, selected eight topics to study during the interim, prioritized as follows:

1. Status of cooperative agreements
2. Delivery of social services, including provision of mental health care for seriously mentally ill tribal members through involuntary commitment
3. Excise taxation on alcohol, gasoline, and cigarettes
4. Natural resource taxation and tax credits
5. Purchase/exchange of state lands located on the reservation
6. Education issues

7. Fish and game matters

8. Water rights

The Committee later made the topic of water rights a higher priority at the request of the Confederated Salish and Kootenai Tribes, who suggested that the Committee study the activities of the Reserved Water Rights Compact Commission.

Within its modest budget, the Committee met four more times and addressed three of its eight study topics: the status of cooperative agreements, provision of mental health services to seriously mentally ill tribal members through involuntary commitment, and the activities of the Reserved Water Rights Compact Commission. In addition, the Committee acted as a liaison between the tribes and state and federal agencies in a number of areas. The remainder of this report summarizes the Committee's activities during the 1983-1984 interim. Additional information on the work of the Committee, including meeting minutes, is available through the Montana Legislative Council, Research Division, State Capitol, Helena, Montana 59620.

Numerous agencies, groups, and individuals provided the Committee with information and resources and actively participated in the Committee's meetings. In particular the Committee thanks the Montana Indian people and the following organizations for their assistance:

- Montana Inter-Tribal Policy Board
- Office of the Coordinator of Indian Affairs
- Montana Department of Justice, Indian Jurisdiction Project
- Montana Department of Institutions
- Montana Department of Health and Environmental Sciences
- Reserved Water Rights Compact Commission
- Bureau of Indian Affairs, Billings Area Office
- Indian Health Service, Billings Area Office

## II. COOPERATIVE AGREEMENTS

The State-Tribal Cooperative Agreements Act, enacted in 1981, consists of 11 sections of law codified as 18-11-101 through 18-11-111 of the Montana Code Annotated (MCA). (A copy of the act is contained in Appendix A.) The act provides a legal framework enabling any public agency (any agency or department of the state, a municipality, county, or school district) to enter into agreements with tribal governments to perform any administrative service or activity that public agencies or tribal governments are authorized by law to perform. However, section 18-11-110, MCA, clearly states that no agreement may enlarge or diminish the jurisdiction exercised by the state of Montana, tribal governments, or the federal government. A staff report prepared for the Committee noted that 16 agreements were in effect as of September 1, 1983 involving two departments of state government, two county agencies, and seven tribal governments.<sup>1</sup>

At the Committee's invitation, state agency personnel at the October 1983 meeting discussed their experiences in negotiating agreements under the State-Tribal Cooperative Agreements Act. The Committee heard reports from the Departments of Justice, Social and Rehabilitation Services, Health and Environmental Sciences, Institutions, and Revenue, and from the Governor's Office. The agencies indicated that some of the act's provisions are cumbersome and time-consuming to implement, particularly when negotiating routine, pass-through agreements.<sup>2</sup> Below is a list of procedural problems identified by the agencies.

- Section 18-11-105, MCA, requires the attorney general to review and approve a cooperative agreement within 30 days after it is submitted to him. Moreover, any agreement involving a state agency must also be approved by the governor within 30 days after he receives it (section 18-11-106, MCA). Thus, it is possible for the state approval period to last 60 days which may mean delay in the delivery of needed social services to the tribes.
  
- Section 18-11-107, MCA, requires an agreement to be filed with the Secretary of the U.S. Department of the Interior, the Montana Secretary of State, the affected tribal government, and the county clerk and recorder of each county where the principal office of one of the parties to the agreement is located. The filing must be completed within 10 days after the attorney general's approval and before commencement of the agreement's performance. Ten days is seldom enough time to collect the signatures of the parties and to file the agreement with the appropriate governmental entities. Also, requiring the filing to be completed before commencement of the agreement's performance often leads to delays in the delivery of services.
  
- Requiring under section 18-11-107, MCA, that all agreements involving state agencies be filed with the Lewis and Clark County clerk and recorder (the clerk of the county where the "principal office" of the state is located) is duplicative and unnecessary since the statute also requires the

agreements to be on file in Helena at the secretary of state's office.

- One agency also questioned the need for filing agreements with the Department of the Interior as required under section 18-11-107, MCA, and suggested that it may be more appropriate to file the agreements with the area offices of the Bureau of Indian Affairs which have trust responsibility for the Montana tribes. This would serve the purpose of giving public notice of the agreement's existence while making the information more accessible to those most likely to use it.

In addition to these procedural difficulties, the Department of Health and Environmental Sciences described for the Committee a jurisdictional problem that the Department encountered in complying with the State-Tribal Cooperative Agreements Act. The Department negotiated an agreement with the Northern Cheyenne Tribe to assist the tribe in developing and operating an air quality program on the reservation. The proposed agreement was submitted to the attorney general for approval although the parties could not agree on who had authority to enforce air quality regulations on the reservation. The attorney general notified the Department that the agreement would not be valid under section 18-11-110(1), MCA, if it enlarged or diminished the jurisdiction of state or tribal government. The Department then concluded that even if a consensus on enforcement provisions could be reached, the air quality agreement would be void under the cooperative agreements act because it would alter state-tribal jurisdictional boundaries. Based on the Department's testimony, the Committee agreed that

section 18-11-110(1), MCA, could act as a barrier to negotiating substantive agreements under the act.

In response to the procedural and jurisdictional problems outlined by state agencies, the Committee adopted two bills, LC 35 and LC 25, for introduction during the 1985 session. Copies of LC 35 and LC 25 are contained in Appendices B and C, respectively.

LC 35 makes several procedural amendments to the filing requirements contained in section 18-11-107, MCA, of the State-Tribal Cooperative Agreements Act. Section 1 of the bill eliminates the requirement that the agreement be filed with the various governmental agencies before commencement of the agreement's performance. It also provides that the 10-day period for filing an agreement does not begin until the agreement has been signed by the parties as well as approved by the attorney general. In addition, section 1 requires an agreement to be filed with the area office of the Bureau of Indian Affairs having trust responsibility over the tribe that is party to the agreement rather than with the U.S. Interior Department Secretary. Finally, section 1 exempts an agreement involving a state agency from being filed with the Lewis and Clark County clerk and recorder.

Section 2 of LC 35 repeals section 18-11-106, MCA, requiring gubernatorial approval of an agreement involving a state agency. Committee members believed that the governor's review and approval of state agreements was repetitious and unnecessary since a similar review and approval process is required of the attorney general under section 18-11-105, MCA.

LC 25 is the Committee's response to the jurisdictional issues raised by the Department of Health and Environmental Sciences. The purpose of the bill is to increase the likelihood that substantive agreements, such as the proposed air quality agreement between the Department and the Northern Cheyenne Tribe, will be made under the State-Tribal Cooperative Agreements Act. LC 25 amends subsection (1) of section 18-11-110, MCA, by striking the language prohibiting negotiation of an agreement that enlarges or diminishes the jurisdiction of state or tribal governments. In its place, language is added to prohibit agreements not permitted by federal law. However, the bill provides:

[P]arties are encouraged to deal with substantive matters and enforcement matters that can be mutually agreed upon, but no such agreement may be considered to effect the underlying jurisdictional authority of any party unless expressly authorized by congress.

LC 35 also strikes subsection (4) of section 18-11-110, MCA, prohibiting negotiation of an agreement providing for the alienation, financial encumbrance, or taxation of any property belonging to an Indian or Indian organization that is held in trust by the United States. This language is removed because the substance of subsection (4) is contained in subsection (1) as amended.

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
RESEARCH REPORT NO. 1234  
JANUARY 1965

BY  
J. A. KILPATRICK  
AND  
R. M. WAYNE

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### III. INVOLUNTARY COMMITMENTS

At the August 1983 meeting of the Committee, Montana Inter-Tribal Policy Board Chairman Caleb Shields identified the availability of mental health care for mentally ill tribal members as a priority item for the Committee's consideration. Without adequate treatment, a seriously mentally ill person poses a threat to himself and to the community. While tribal courts have the authority to commit an Indian person, tribal resources to treat the mentally ill are scarce. Conversely, state treatment facilities do exist, but the state cannot commit an Indian living on the reservation under state commitment procedures and does not, at present, recognize tribal commitment orders.<sup>3</sup>

The central legal issue involved in commitment procedures for Indians living on reservations is one of jurisdiction. The 1977 case of White v. Califano<sup>4</sup> specifically addresses the jurisdictional issue. The White case involved the refusal of a county in South Dakota to commit a member of the Oglala Sioux Tribe living on the Pine Ridge Indian Reservation. The federal district court judge in White found that the exercise of state commitment procedures involving a tribal member in Indian country infringes upon the right of Indian people to govern themselves. Because these procedures violate tribal self-government, the state has no jurisdiction to accept or act upon an application for involuntary commitment. Since the state lacks jurisdiction, it has no responsibility for providing mental health care for an Indian person. Furthermore, the judge ruled that since the mentally ill person has no alternative source of treatment, the duty for care and payment rests with the federal

government. The district court ruling was appealed and later affirmed by the Eighth Circuit U.S. Court of Appeals in 1978.<sup>5</sup> Although the ruling in White is binding only in the Eighth Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota), "the decision has influenced attitudes and practices throughout the country",<sup>6</sup> including Montana.

In October 1983, Margene Tower, Mental Health Officer for the Billings Area Office of the Indian Health Service (IHS) and Nick Rotering, Legal Counsel for the state Department of Institutions (Institutions) told the Committee that their agencies, together with the tribes of the Rocky Boy's Reservation, had been working on an approach to the commitment problem that avoided the jurisdictional issues raised in White.

First, the Chippewa Cree Indians adopted a tribal commitment code insuring due process protections similar to the state laws on involuntary commitment. The code provided that if a tribal court determines through legal proceedings that a tribal member is seriously mentally ill, the court may commit the person to IHS for treatment for no longer than three months. Then the tribe entered into an agreement with IHS for treatment of mentally ill members at IHS's expense. IHS in turn began negotiations with Institutions to provide mental health care services to persons committed to IHS for treatment.

The proposed contract between IHS and Institutions, however, contained a federally mandated contract clause requiring Institutions to give preference to Native Americans when employing persons to provide treatment services. Institutions was unable to sign

the agreement because the Indian hiring preference conflicted with the 1983 Montana Supreme Court decision in Crabtree v. Montana State Library.<sup>7</sup> This ruling required public employers to give an absolute hiring preference to veterans, veterans' spouses and surviving spouses, disabled veterans' dependents, and disabled civilians.

The conflict between state law and federal regulations became less of an issue in negotiations when the Montana Legislature in December 1983 repealed the state's absolute preference and replaced it with a relative one. Moreover, IHS demonstrated to Institutions' satisfaction that the federal contract clause required no more of the Department than the Department's own affirmative action policies.

But resolution of the preference issue did not result in a contract between the parties. In May 1984, IHS submitted a contract to Institutions providing for mental health services for involuntarily committed members of the Fort Peck, as well as Rocky Boy's, Tribes. Institutions, concerned about a possible shortage of beds at the state treatment facility, issued a counter proposal to cover only the Rocky Boy's Reservation. In addition, the Department worried about potential lawsuits against the state alleging that Indians committed under tribal codes were not afforded adequate due process protections. Before signing an agreement with IHS, Institutions wanted some assurance that the federal government, through the United States Department of Justice, would defend any litigation resulting from commitments made in connection with the contract. IHS could not provide such assurance because it had no authority to commit the Department of Justice to defend the cases.

At its final meeting in September 1984, the Committee by unanimous vote voiced support for an agreement between IHS and Institutions for the provision of mental health services to involuntarily committed tribal members. At the Committee's request, Senator Tom Towe agreed to work with the parties to facilitate an agreement.

#### IV. RESERVED WATER RIGHTS COMPACT COMMISSION

The Reserved Water Rights Compact Commission was statutorily created in 1979 with enactment of Senate Bill No. 76. The Commission is authorized to negotiate compacts with the Indian tribes and certain federal agencies<sup>8</sup> for the division and apportionment of reserved water rights; parties, while involved in negotiations with the Commission, are exempt from the requirements of filing water rights claims with the Department of Natural Resources and Conservation and adjudicating these claims in the state water courts. Four of the nine Commission members are appointed by the governor; two by the president of the senate; two by the speaker of the house; and one member by the attorney general. Members serve until the Commission's work is completed or until they resign. The Commission is scheduled to terminate July 1, 1985. To date, no compacts have been concluded or submitted to the Montana Legislature for ratification.

The chairman of the Compact Commission, W. Gordon McOmber, met with the Indian Affairs Committee in March 1984 to brief members on the status of tribal negotiations. The meeting was well attended by tribal leaders. The bulk of the discussion on the Commission's activities focused on the Commission's decision not to submit a proposed Fort Peck water rights compact to the 1983 Legislature for ratification. The Commission's decision was based on objections raised by the Attorney General's Office and the Department of Natural Resources and Conservation to certain terms of the compact. Commission members believed that without the approval of these executive agencies, the compact had little chance of being ratified.

It was obvious from the testimony of tribal leaders from the Blackfeet, Flathead, Northern Cheyenne, Fort Belknap, and Crow Reservations that the Commission's credibility suffered because of the Fort Peck incident. The tribes felt that the Commission had acted in bad faith in not submitting the compact to the 1983 Legislature. They were disillusioned by the Commission's failure to coordinate its activities with other executive agencies. Tribal leaders questioned whether the Commission had the authority to negotiate on behalf of the state. Before resuming negotiations with the Commission, the tribes wanted some assurance that the Commission's future actions would represent those of the executive branch and that a compact once negotiated would be submitted for ratification.

Mr. McOmber admitted that the Commission's reputation among tribal leaders had been damaged. He vowed to improve communications and coordination between the Commission and the other executive agencies to insure that the Fort Peck incident would not be repeated. He asked the tribes to put the incident behind them and to return to negotiations.

At the Committee's request, Mr. McOmber returned in September 1984 to present a progress report on negotiations. He reported that since the March meeting, the Commission had invited each tribe to meet informally with the Commission to discuss the possibility of resuming formal negotiations. Meetings were held with the Flathead, Northern Cheyenne, and Fort Belknap Tribes; meetings with the Rocky Boy's, Crow, and Fort Peck Tribes seemed likely. In addition, Mr. McOmber told the Committee that the Compact Commission had adopted a formal policy for including

the Governor's and Attorney General's Offices and the Department of Natural Resources and Conservation in the Commission's decisionmaking process.

Despite the fact that the Commission has yet to submit a compact for legislative approval, the Committee agreed that negotiation of reserved water rights was superior to litigation. The Committee voted unanimously to introduce legislation (LC 37) extending the life of the Commission for two years. (A copy of LC 37 is contained in Appendix D.) Specifically, sections 85-2-217 and 85-2-702, MCA, (sections 1 and 4 of the bill) extend the time period from July 1, 1985 to July 1, 1987 during which an Indian tribe or a federal agency that is negotiating with the Commission is not required to file water rights claims with the Department of Natural Resources and Conservation and to adjudicate these claims in state water courts.

In addition, the Committee added several other amendments to LC 37 at the request of Caleb Shields, Chairman of the Montana Inter-Tribal Policy Board and Fort Peck tribal council member. Mr. Shields suggested that section 85-2-702, MCA, (section 4 of LC 37) be amended to require that the contents of a compact approved by the Legislature and the tribe or federal agency be contained in the final, rather than preliminary, decree of existing water rights issued by a water judge. As a compromise, the Committee amended sections 85-2-231, 85-2-234, and 85-2-702, MCA, (sections 2 through 4 of LC 37) to require that the terms of the compact be contained in the preliminary decree only for informational purposes and that the compact be reproduced unchanged in the final decree unless renegotiated. The combined effect of these

amendments is to insure that a compact once approved by the Legislature and the tribe or federal agency may not be altered by a water judge.

Mr. Shields also questioned the need for Congressional approval of all compacts as currently required by state statute. The Committee, uncertain whether Congressional approval was essential under governing federal law, amended section 85-2-702, MCA, (section 4 of LC 37) to require that approval by Congress or other appropriate federal authority be obtained only if legally necessary.

Additionally, Mr. Shields told the Committee that the 60-day deadline for filing all federal and Indian claims for reserved water rights that have not been resolved by the Compact Commission's termination date was too short. The Committee, amending section 85-2-702, MCA (section 4 of LC 37), extended the filing period from 60 days to 6 months.

The Committee also provided that the amendments contained in LC 37 be effective on passage and approval (section 5).

## V. LIAISON ACTIVITIES

During the 1983-84 legislative interim, tribal members occasionally sought the Committee's help on matters involving federal and state government. At the tribes' request, the Committee acted as a liaison between the tribes and public officials to try to resolve these matters. Below is a review of the Committee's liaison activities.

Federal Oversight Hearings on Problems of Indian Cattle Producers: At the Committee's first meeting in August 1983, Donald L. Clayborn, State Coordinator of Indian Affairs, discussed the seriously deteriorating economic conditions confronting Indian cattle producers in the northwestern plains states. He reported that reservation cattle operations, especially the Indian-owned livestock units, were facing severe financial distress. Mr. Clayborn asked the Committee to send a letter to the U.S. Senate Select Committee on Indian Affairs urging the Senate Committee to hold oversight hearings in the northwestern plains states on the plight of Indian ranchers. The Montana Indian Affairs Committee, believing that federal lawmakers should be alerted to the seriousness of this problem, sent a letter to the chairman of the Senate Indian Committee, urging that oversight hearings begin immediately in the northwestern plains states.

To date, the U.S. Senate Select Committee on Indian Affairs has not held hearings on this issue. However, the U.S. Secretary of the Interior has appointed an Indian Agricultural Task Force composed of representatives of both the Bureau of Indian Affairs

and Indian tribes whose purpose is to study ways to alleviate the economic problems of agriculturists in Indian country.

Federal Indian Tribal Tax Status Act of 1982. At the Committee's October 1983 meeting, Clara Spotted Elk, staff assistant to the chairman of the Northern Cheyenne Tribe, asked the Committee's help in securing the implementation of the Federal Indian Tribal Tax Status Act. This legislation, enacted in January 1983, gives tribes the same preferential tax status as local governments with regards to raising and conserving revenue. In addition, the Act, originally scheduled to sunset in January 1985, requires the Internal Revenue Service of the U.S. Department of the Treasury (IRS) to adopt regulations to fully implement the Act's provisions. The Northern Cheyenne tribe expressed dismay at the IRS's 10-month delay in adopting implementing regulations despite tribal efforts to encourage speedy adoption. At the tribe's request, the Committee wrote to Max Baucus, Montana's U.S. Senator who is a member of the Senate Finance Committee, asking for his assistance to hasten publications of the federal regulations.

In May 1984, the IRS issued temporary regulations for implementing the Act. These regulations will remain in effect until superseded by final regulations. The IRS also has issued a list of tribes who, because of their exercise of governmental functions, qualify as "Indian tribal governments" for the purposes of the Act. In July 1984 the Indian Tribal Tax Status was made permanent in the Deficit Reduction Act of 1984.

U.S. Senate Select Committee on Indian Affairs. Also at the October 1983 meeting, Clara Spotted Elk reported that the U.S. Senate Select Committee on Indian Affairs was scheduled to sunset January 1984; upon expiration, its responsibilities would be transferred to the Senate Committee on Labor and Human Resources. The Northern Cheyenne tribe felt that abolishment of the Senate Select Committee would seriously dilute the nation's commitment to Indian affairs. Ms. Spotted Elk urged the Committee to contact Montana's U.S. Senators in support of Senate Resolution 127 (S. Res. 127), a proposal to establish the U.S. Senate Select Committee on Indian Affairs as a permanent committee. Members agreed that the Senate committee should continue to exist as a national forum for all interested parties to express their views and concerns on Indian issues. The Committee sent letters to Senators Max Baucus and John Melcher endorsing passage of S. Res. 127.

In November 1983, the U.S. Senate extended the life of the Indian Affairs Committee until July 1, 1984. In June 1984, the Senate adopted S. Res. 127 making the committee permanent.

Crow Tribe v. Montana. In Crow Tribe v. Montana, the Crow Tribe is challenging the legality of the state's imposition of its 30% coal severance tax on tribally owned coal produced by non-Indian coal mine lessees. The tribe has asserted that the state and county are not authorized to tax coal produced on the reservation or coal produced from an area known as the "ceded strip". The ceded strip is an area of land whose surface rights were ceded by the tribe to the United States early in this century.

In 1979, the U.S. District Court of Montana dismissed the tribe's complaint on the state's motion for summary judgment, ruling that the tribe had no legal basis for the suit. In 1981, the Ninth Circuit U.S. Court of Appeals reversed the district court, ruling that legal basis for the suit existed. The case was remanded to the district court for trial. The trial began in January 1984. To date, no ruling has been issued.

At the March 1984 Committee meeting, Senator Tom Towe told members that regardless of the district court ruling, an adjudicated resolution in the multi-million dollar Crow case was years away; the losing party would likely appeal to the Ninth Circuit U.S. Court of Appeals and then to the U.S. Supreme Court. He suggested that the Committee encourage an out-of-court settlement of the lawsuit. He felt that the state and the tribe could negotiate a settlement that would be advantageous to both sides. Members agreed that support for an out-of-court settlement was in keeping with the Committee's mandate to encourage state-tribal cooperation and to avoid costly litigation. The legislators felt that negotiations could result in a more flexible solution than a court decision. After the meeting, the Committee sent a letter to Montana's Governor, Ted Schwinden, expressing unanimous support for a negotiated settlement in the Crow case.

In written response to the Committee's letter, Governor Schwinden said that he would ask the Director of the Department of Revenue to contact the state's legal counsel to discuss the feasibility of negotiating with the tribe. He said that if negotiations could be productive, he would recommend that they be conducted. The Director of the Department of Revenue, following

meetings with the state's counsel, concluded that the state would not benefit at this time from negotiating a settlement before the district court decision is rendered.

Sale/Exchange of State Lands. State law now permits the Board of Land Commissioners to sell state land to U.S. citizens, persons who have declared their intentions to become citizens, corporations, and other states. In addition, the law provides for the exchange of state lands with counties and the United States. The Board also may exchange state land for private land.

Currently the state owns land on the Blackfeet, Crow, Flathead, Fort Belknap, Northern Cheyenne, and Rocky Boy's Reservations. While an Indian person by virtue of his U.S. citizenship is eligible to buy these lands, an Indian tribe is prevented from doing so unless the tribe incorporates. Similarly, there is no specific statutory authorization for exchanging state lands with a tribe.

At the September 1984 meeting, Donald L. Clayborn, Coordinator of Indian Affairs, asked the Committee to sponsor legislation to permit the tribes to obtain state lands located on the reservations. Tribal ownership of these lands would reduce the checkerboard pattern of ownership on the reservations which has resulted in jurisdictional problems. Moreover, it would give the tribes maximum use of reservation lands for agricultural purposes.

The Committee by unanimous vote agreed to introduce legislation to permit the tribes to buy or to exchange

tribal lands for state lands. A copy of the Committee's bill (LC 122) is contained in Appendix E.

Section 1 of LC 122 amends section 77-2-201, MCA, to allow the Board of Land Commissioners to give to a tribal government<sup>9</sup> or to the United States on the tribe's behalf some or all state lands located wholly or partially within or adjacent to the reservation's boundaries in exchange for lands of equal or greater value. Section 2 of the bill amends section 77-2-306, MCA, to provide that state lands located wholly or partially within or adjacent to the reservation's boundaries may be sold to a tribal government. Finally, section 3 of LC 122 amends section 77-2-307, MCA, to exempt the tribes from the prohibition that no person or corporation may buy more than one section of state land (640 acres) and that this area may not include more than 160 acres of land susceptible of irrigation. This would give the tribes an opportunity to buy the state's entire acreage located partially or wholly within or adjacent to the reservation's boundaries.

## VI. CONCLUSION

The accomplishments of the Select Committee on Indian Affairs go beyond the recommendation of five bills for consideration by the 1985 Montana Legislature. The Committee, by serving as a forum for airing the concerns of both Indian and non-Indian peoples, enhanced state-tribal cooperation. By keeping the lines of communication open, the legislators made progress toward dispelling some of the historical mistrust between the tribes and the state.

The Committee, anxious to keep the dialogue going, unanimously endorsed LC 109, a bill providing for appointment in 1985 of another legislative select committee on Indian affairs. Under the provisions of LC 109, the composition of the committee is identical to that of the 1983-1984 Committee: four senators and four representatives with no more than two members from either house being members of the same party. Senate members are appointed by the president of the senate while the speaker of the house appoints the house members. The bill provides for the filling of vacancies, election of officers, compensation for members, and committee staff assistance. Furthermore, LC 109 directs the committee to:

- seek opinions of and information from interested persons and agencies to gain insight into Indian/non-Indian relations;
- hold hearings both on and off reservations;
- encourage participation of Indian people at its meetings;

- act as a liaison between the Indian people and the Legislature;
- encourage tribal-state and tribal-local government cooperation; and
- report its activities to the Legislature.

In the past, Indian affairs committees were given only two-year lifespans, thus requiring legislation to be introduced each session to create another committee. During their deliberations on LC 109, Committee members agreed that the next committee should operate for more than two years; however, members were reluctant to create a permanent legislative body. As a compromise, the legislators authorized the committee to function for six years. It will terminate in January 1991.

Members also included in LC 109 a \$12,000 general fund appropriation to cover committee expenses for the biennium ending June 30, 1987. The Committee felt that this appropriation would permit the next committee to accomplish some of the tasks, such as holding on-reservation hearings, that it was unable to accomplish because of a shortage of funds.

A copy of LC 109 is contained in Appendix F.

## END NOTES

<sup>1</sup>See Montana's State-Tribal Cooperative Agreements Act (October 1983), unpublished staff report on file at the Montana Legislative Council, Research Division, State Capitol, Helena, Montana 59620.

<sup>2</sup>The term "pass-through agreement" refers to an agreement made to distribute federal funds or commodities at the local level when the allocation is locally administered and merely passes through state government. A commodities distribution agreement made under the federal Needy Family Program is an example of a pass-through agreement.

<sup>3</sup>Except for the Confederated Salish and Kootenai Tribes of the Flathead Reservation, no agreements exist between the tribes and the state or counties concerning recognition of tribal court commitment orders. On the Flathead Reservation, tribal courts have concurrent jurisdiction with state district courts. When a tribal judge issues a commitment order, it is cosigned by the district judge, and the mentally ill Indian may receive treatment at a state facility.

<sup>4</sup>White v. Califano, 437 Supp. 543, 554 - 555 (D SD 1977).

<sup>5</sup>White v. Califano, 581 F 2d 697 (8th Cir 1978).

<sup>6</sup>Eric Henderson, "Involuntary Civil Commitment of American Indians Residing in Indian Country," Arizona Law Review, Vol. 24, no. 3, p. 649.

<sup>7</sup>Crabtree v. Montana State Library, 665 P.2d 231, 40 St. Rep. 963 (1983).

<sup>8</sup>Federal agencies possessing reserved water rights include the United States Departments of Agriculture and Interior.

<sup>9</sup>For the purposes of permitting the sale of state lands to or exchange of these lands with a tribal government, the term "tribal government" is defined in section 18-11-102, MCA, as "the officially recognized government of any Indian tribe, nation, or other organized group or community located in Montana exercising self-government powers and recognized as eligible for services provided by the United States to Indians because of their status as Indians".

APPENDIX A

STATE-TRIBAL COOPERATIVE AGREEMENTS ACT  
(18-11-101 through 18-11-111, MCA)



**18-11-101. Short title.** This chapter shall be known and may be cited as the "State-Tribal Cooperative Agreements Act".

History: En. Sec. 1, Ch. 309, L. 1981.

**18-11-102. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Public agency" means any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.

(2) "Tribal government" means the officially recognized government of any Indian tribe, nation, or other organized group or community located in Montana exercising self-government powers and recognized as eligible for services provided by the United States to Indians because of their status as Indians.

History: En. Sec. 2, Ch. 309, L. 1981.

**18-11-103. Authorization to enter agreement — general contents.** (1) Any one or more public agencies may enter into an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments entering into the contract is authorized by law to perform. The agreement shall be authorized and approved by the governing body of each party to the agreement.

(2) The agreement shall set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.

History: En. Sec. 3, Ch. 309, L. 1981.

**18-11-104. Detailed contents of agreement.** The agreement authorized by 18-11-103 shall specify the following:

- (1) its duration;
- (2) the precise organization, composition, and nature of any separate legal entity created thereby;
- (3) the purpose of the agreement;
- (4) the manner of financing the agreement and establishing and maintaining a budget therefor;
- (5) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
- (6) provision for administering the agreement, which may include creation of a joint board responsible for such administration;
- (7) the manner of acquiring, holding, and disposing of real and personal property used in the agreement;
- (8) when an agreement involves law enforcement:
  - (a) the minimum training standards and qualifications of law enforcement personnel;
  - (b) the respective liability of each public agency and tribal government for the actions of law enforcement officers when acting under the provisions of an agreement;

(c) the minimum insurance required of both the public agency and the tribal government; and

(d) the exact chain of command to be followed by law enforcement officers acting under the provisions of an agreement; and

(9) any other necessary and proper matters.

History: En. Sec. 4, Ch. 309, L. 1981.

**18-11-105. Submission of agreement to attorney general.** (1) As a condition precedent to an agreement made under this chapter becoming effective, it must have the approval of the attorney general of Montana.

(2) The attorney general shall approve an agreement submitted to him under this chapter unless he finds it is not in proper form or does not meet the requirements set forth in this chapter or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written statement to the governing bodies of the public agency and tribal government concerned, specifying the reasons for his disapproval.

(3) If the attorney general does not disapprove the agreement within 30 days after its submission to him, it shall be considered approved by him.

History: En. Sec. 5, Ch. 309, L. 1981.

**18-11-106. Agreements by state agencies — requirements.** As a condition precedent to an agreement made under this chapter by a state agency becoming effective, it must have, in addition to the approval of the attorney general under 18-11-105, the approval of the governor. The criteria and time for the governor's approval shall be the same as that for the attorney general's approval as provided in 18-11-105.

History: En. Sec. 6, Ch. 309, L. 1981.

**18-11-107. Filing of agreement.** Within 10 days after approval by the attorney general and prior to commencement of its performance, an agreement made pursuant to this chapter must be filed with:

(1) the secretary of the United States department of the interior;

(2) each county clerk and recorder of each county where the principal office of one of the parties to the agreement is located;

(3) the secretary of state; and

(4) the affected tribal government.

History: En. Sec. 7, Ch. 309, L. 1981.

**18-11-108. Revocation of agreement.** An agreement made pursuant to this chapter is subject to revocation by any party upon 6 months' notice to the other unless a different notice period of time is provided for within the agreement. No agreement may provide for a notice period for revocation in excess of 5 years.

History: En. Sec. 8, Ch. 309, L. 1981.

**18-11-109. Authorization to appropriate funds for purpose of agreement.** Any public agency entering into an agreement pursuant to this chapter may appropriate funds for and may sell, lease, or otherwise give or supply material to any entity created for the purpose of performance of the agreement and may provide such personnel or services therefor as is within its legal power to furnish.

History: En. Sec. 9, Ch. 309, L. 1981.

**18-11-110. Specific limitations on agreements.** Nothing in this chapter may be construed to authorize an agreement that:

(1) enlarges or diminishes the jurisdiction over civil or criminal matters that may be exercised by either the state of Montana or tribal governments located in Montana;

(2) authorizes a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country;

(3) authorizes a public agency or tribal government to enter into an agreement except as authorized by their own organizational documents or enabling laws; or

(4) provides for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

History: En. Sec. 10, Ch. 309, L. 1981.

**18-11-111. Validity of existing agreements.** (1) Except as provided in subsection (2), this chapter does not affect the validity of any agreement entered into between a tribe and a public agency prior to July 1, 1981.

(2) However, any such agreement must satisfy the requirements of this chapter no later than July 1, 1983.

History: En. Sec. 11, Ch. 309, L. 1981.



## APPENDIX B

LC 35      Revising the requirements concerning filing of a state-tribal cooperative agreement; removing the requirement for gubernatorial approval of an agreement involving a state agency.



1 \_\_\_\_\_ BILL NO. \_\_\_\_\_  
2 INTRODUCED BY \_\_\_\_\_  
3 BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE  
6 REQUIREMENTS CONCERNING FILING OF A STATE-TRIBAL COOPERATIVE  
7 AGREEMENT; REMOVING THE REQUIREMENT FOR GUBERNATORIAL  
8 APPROVAL OF AN AGREEMENT INVOLVING A STATE AGENCY; AMENDING  
9 SECTION 18-11-107, MCA; AND REPEALING SECTION 18-11-106,  
10 MCA."  
11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
13 Section 1. Section 18-11-107, MCA, is amended to read:  
14 "18-11-107. Filing of agreement. (1) Within 10 days  
15 after approval by the attorney general and prior--to  
16 commencement-of-its-performance signature of the parties, an  
17 agreement made pursuant to this chapter must be filed with:  
18 (1)(a) the secretary area office of the bureau of  
19 Indian affairs of the United States department of the  
20 interior having trust responsibility for the tribe that is  
21 party to the agreement or its successor agency;  
22 (2)(b) each county clerk and recorder of each county  
23 where the principal office of one of the parties to the  
24 agreement is located, except as provided in (2) of this  
25 section;

1 (3)(c) the secretary of state; and  
2 (4)(d) the affected tribal government.  
3 (2) If a party to the agreement is a state agency, the  
4 agreement need not be filed with the county clerk and  
5 recorder for Lewis and Clark County."  
6 NEW SECTION. Section 2. Repealer. Section 18-11-106,  
7 MCA, is repealed.

-End-



## APPENDIX C

LC 25      Clarifying limitations on permissive subject  
         matter      of      state-tribal      cooperative  
         agreements.



1 government of the United States to make criminal laws for or  
2 enforce criminal laws in Indian country; or  
3 (3) authorizes a public agency or tribal government to  
4 enter into an agreement except as authorized by their own  
5 organizational documents or enabling laws; or  
6 {4}--provides---for---the---alienation,---financial  
7 encumbrance, or taxation of any real or personal property,  
8 including water rights, belonging to any Indian or any  
9 Indian tribe, band, or community that is held in trust by  
10 the United States or is subject to a restriction against  
11 alienation imposed by the United States. "

-End-

1 BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_

3 BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY LIMITATIONS

6 ON PERMISSIBLE SUBJECT MATTER OF STATE-TRIBAL COOPERATIVE

7 AGREEMENTS; AMENDING SECTION 18-11-110, MCA."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 18-11-110, MCA, is amended to read:

11 "18-11-110. Specific limitations on agreements.

12 Nothing in this chapter may be construed to authorize an

13 agreement that:

14 (1) entarges-or-diminishes-the-jurisdiction-over-civil

15 or-criminal-matters-that-may-be-exercised--by--either--the

16 state--of--Montana-or-tribal-governments-located-in-Montana;

17 is not permitted by federal law. However, the parties are

18 encouraged to deal with substantive matters and enforcement

19 matters that can be mutually agreed upon, but no such

20 agreement may be considered to affect the underlying

21 jurisdictional authority of any party unless expressly

22 authorized by congress.

(2) authorizes a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the



#### APPENDIX D

LC 37      Providing for a 2-year extension of the existence of the Reserved Water Rights Compact Commission; providing for federal approval of a compact only if legally necessary; requiring that the terms of a compact set forth in a preliminary decree be reproduced unchanged in the final decree; extending from 60 days to 6 months the time period for filing in water court claims unresolved by the Compact Commission.



1  
2 INTRODUCED BY \_\_\_\_\_  
3 BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A 2-YEAR  
6 EXTENSION OF THE EXISTENCE OF THE RESERVED WATER RIGHTS  
7 COMPACT COMMISSION; PROVIDING FOR FEDERAL APPROVAL OF A  
8 COMPACT ONLY IF LEGALLY NECESSARY; REQUIRING THAT THE TERMS  
9 OF A COMPACT SET FORTH IN A PRELIMINARY DECREE BE REPRODUCED  
10 UNCHANGED IN THE FINAL DECREE; EXTENDING FROM 60 DAYS TO 6  
11 MONTHS THE TIME PERIOD FOR FILING IN THE WATER COURT CLAIMS  
12 UNRESOLVED BY THE COMPACT COMMISSION; AMENDING SECTIONS  
13 85-2-217, 85-2-231, 85-2-234, AND 85-2-702, MCA; AND  
14 PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
17  
18 Section 1. Section 85-2-217, MCA, is amended to read:  
19 "85-2-217. Suspension of adjudication. While  
20 negotiations for the conclusion of a compact under part 7  
21 are being pursued, all proceedings to generally adjudicate  
22 reserved Indian water rights and federal reserved water  
23 rights of those tribes and federal agencies which are  
24 negotiating are suspended. The obligation to file water  
25 rights claims for those reserved rights is also suspended.  
This suspension shall be effective until July 1, 1985 1987,

1 as long as negotiations are continuing or ratification of a  
2 completed compact is being sought. If approval by the state  
3 legislature and tribes or federal agencies has not been  
4 accomplished by July 1, 1985 1987, the suspension shall  
5 terminate on that date. Upon termination of the suspension  
6 of this part, the tribes and the federal agencies shall be  
7 subject to the special filing requirements of 85-2-702(3)  
8 and all other requirements of the state water adjudication  
9 system provided for in Title 85, chapter 2. Those tribes and  
10 federal agencies that choose not to negotiate their reserved  
11 water rights shall be subject to the full operation of the  
12 state adjudication system and may not benefit from the  
13 suspension provisions of this section."  
14  
15 Section 2. Section 85-2-231, MCA, is amended to read:  
16 "85-2-231. Preliminary decree. (1) The water judge  
17 shall issue a preliminary decree. The preliminary decree  
18 shall be based on:  
19 (a) the statements of claim before the water judge;  
20 (b) the data submitted by the department;  
21 (c) the contents of compacts approved by the Montana  
22 legislature and the tribe or federal agency or, lacking an  
23 approved compact, the filings for federal and Indian  
24 reserved rights; and  
25 (d) any additional data obtained by the water judge.  
The preliminary decree shall be issued within 90 days after

1 the close of the special filing period set out in  
 2 85-2-702(3) or as soon thereafter as is reasonably feasible.  
 3 This section does not prevent the water judge from issuing  
 4 an interlocutory decree or other temporary decree if such a  
 5 decree is necessary for the orderly administration of water  
 6 rights prior to the issuance of a preliminary decree.

7 (2) A preliminary decree may be issued for any  
 8 hydrologically interrelated portion of a water division,  
 9 including but not limited to a basin, subbasin, drainage,  
 10 subdrainage, stream, or single source of supply of water, at  
 11 a time different from the issuance of other preliminary  
 12 decrees or portions of the same decree.

13 (3) The preliminary decree shall contain the  
 14 information and make the determinations, findings, and  
 15 conclusions required for the final decree under 85-2-234.  
 16 The water judge shall include in the preliminary decree, for  
 17 informational purposes, the contents of a compact negotiated  
 18 under the provisions of part 7 that has been approved by the  
 19 legislature and the tribe or federal agency whether or not  
 20 it has been ratified by congress.

21 (4) If the water judge is satisfied that the report of  
 22 the water master meets the requirements for the preliminary  
 23 decree set forth in subsections (1) and (3), and is  
 24 satisfied with the conclusions contained in the report, the  
 25 water judge shall adopt the report as the preliminary

1 decree. If the water judge is not so satisfied, he may, at  
 2 his option, recommit the report to the master with  
 3 instructions, or modify the report and issue the preliminary  
 4 decree."

5 Section 3. Section 85-2-234, MCA, is amended to read:  
 6 "85-2-234. Final decree. (1) The water judge shall, on  
 7 the basis of the preliminary decree and on the basis of any  
 8 hearing that may have been held, enter a final decree  
 9 affirming or modifying the preliminary decree. If no  
 10 request for a hearing is filed within the time allowed, the  
 11 preliminary decree automatically becomes final, and the  
 12 water judge shall enter it as the final decree.

13 (2) The terms of a compact negotiated and ratified  
 14 under 85-2-702 must be included in the final decree without  
 15 alteration.

16 ~~(2)~~(3) The final decree shall establish the existing  
 17 rights and priorities within the water judge's jurisdiction  
 18 of persons required by 85-2-221 to file a claim for an  
 19 existing right and of persons required to file a declaration  
 20 of existing rights in the Powder River Basin pursuant to an  
 21 order of the department or a district court issued under  
 22 sections 8 and 9 of Chapter 452, Laws of 1973.

23 ~~(3)~~(4) The final decree shall state the findings of  
 24 fact, along with any conclusions of law, upon which the  
 25 existing rights and priorities of each person named in the

1 decree are based.

2 ~~(4)~~(5) For each person who is found to have an  
3 existing right, the final decree shall state:

4 (a) the name and post-office address of the owner of  
5 the right;

6 (b) the amount of water, rate, and volume, included in  
7 the right;

8 (c) the date of priority of the right;

9 (d) the purpose for which the water included in the  
10 right is used;

11 (e) the place of use and a description of the land, if  
12 any, to which the right is appurtenant;

13 (f) the source of the water included in the right;

14 (g) the place and means of diversion;

15 (h) the inclusive dates during which the water is used  
16 each year;

17 (i) any other information necessary to fully define  
18 the nature and extent of the right."

19 Section 4. Section 85-2-702, MCA, is amended to read:

20 "85-2-702. Negotiation with Indian tribes. (1) The  
21 reserved water rights compact commission, created by  
22 2-15-212, may negotiate with the Indian tribes or their  
23 authorized representatives jointly or severally to conclude  
24 compacts authorized under 85-2-701. Compact proceedings  
25 shall be commenced by the commission. The commission shall

1 serve by certified mail directed to the governing body of  
2 each tribe a written request for the initiation of  
3 negotiations under this part and a request for the  
4 designation of an authorized representative of the tribe to  
5 conduct compact negotiations. Upon receipt of such written  
6 designation from the governing body of a tribe, compact  
7 negotiations shall be considered to have commenced.

8 (2) When the compact commission and the Indian tribes  
9 or their authorized representatives have agreed to a  
10 compact, they shall sign a copy and file an original copy  
11 with the department of state of the United States of America  
12 and copies with the secretary of state of Montana and with  
13 the governing body for the tribe involved. The compact is  
14 effective and binding upon all parties upon ratification by  
15 the legislature of Montana, any affected tribal governing  
16 body, and, if legally necessary, the congress of the United  
17 States or other appropriate federal authority.

18 (3) Upon its approval by the Montana legislature and  
19 the tribe or federal agency, the terms of a compact must be  
20 included in the preliminary decree for informational  
21 purposes as provided by 85-2-231, and unless renegotiated,  
22 the terms of the compact must be included in the final  
23 decree without alteration. However, if approval of the state  
24 legislature and tribe or federal agency has not been  
25 accomplished by July 1, 1985 1987, all federal and Indian

1 claims for reserved water rights that have not been resolved  
2 by a compact must be filed with the department within 60  
3 days 6 months. These new filings shall be used in the  
4 formulation of the preliminary decree and shall be given  
5 treatment similar to that given to all other filings."

6 NEW SECTION. Section 5. Effective date. This act is  
7 effective on passage and approval.

-End-

## APPENDIX E

LC 122      Permitting the Board of Land Commissioners to exchange state lands located within or adjacent to Indian reservations for land owned by tribal governments; permitting the Board to sell state lands located within or adjacent to Indian reservations to tribal governments.



1 United States may continue to enjoy the use of the land  
 2 under terms and conditions required by the federal  
 3 government and in accordance with P.L. 88-607, as amended,  
 4 (43 U.S.C. 1411 through 1418), and the current user of the  
 5 land received from the United States may continue to utilize  
 6 the land on the terms and conditions imposed by law or by  
 7 the board.

8 (2) The board may enter into a contract or agreement  
 9 with a tribal government as defined in 18-11-102 or with the  
 10 United States for the relinquishment to the tribal  
 11 government or to the United States in trust for the tribal  
 12 government of any rights of the state to some or all state  
 13 lands located wholly or partially within or adjacent to the  
 14 exterior boundaries of the tribal government's reservation;  
 15 however, the state, in exchange for these relinquished  
 16 rights, must receive from the tribal government or the  
 17 United States lands of equal or greater value."

18 Section 2. Section 77-2-306, MCA, is amended to read:  
 19 "77-2-306. Who may purchase. (1) State lands shall be  
 20 sold only to citizens of the United States or to persons who  
 21 have declared their intentions to become citizens or to  
 22 corporations organized under the laws of this state. No  
 23 person shall be qualified to purchase state land who has not  
 24 reached the age of 18 years. As far as possible to  
 25 determine, the lands shall be sold only to actual settlers

1  
 2 INTRODUCED BY \_\_\_\_\_ BILL NO. \_\_\_\_\_  
 3 BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING THE BOARD OF  
 6 LAND COMMISSIONERS TO EXCHANGE STATE LANDS LOCATED WITHIN OR  
 7 ADJACENT TO INDIAN RESERVATIONS FOR LANDS OWNED BY TRIBAL  
 8 GOVERNMENTS; PERMITTING THE BOARD TO SELL STATE LANDS  
 9 LOCATED WITHIN OR ADJACENT TO INDIAN RESERVATIONS TO TRIBAL  
 10 GOVERNMENTS; AMENDING SECTIONS 77-2-201, 77-2-306, AND  
 11 77-2-307, MCA."

12  
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 77-2-201, MCA, is amended to read:  
 15 "77-2-201. Exchange of land with United States or  
 16 tribal governments. (1) (a) The board may enter into  
 17 contracts or agreements with the United States or any  
 18 department thereof having jurisdiction for the waiving and  
 19 relinquishment to the United States of any rights of the  
 20 state in and to sections 16 and 36 of any township and to  
 21 any other parcel of state lands, provided that the state  
 22 shall, in lieu of the rights so waived and relinquished,  
 23 receive from the United States other lands of equal or  
 24 greater value.

25 (2)(b) The current user of the land transferred to the

1 or to persons who will improve the same and not to persons  
 2 who are likely to hold such lands for speculative purposes  
 3 intending to resell the same at a higher price without  
 4 having added anything to their value.

5 (2) State lands may be sold to any sovereign state of  
 6 the United States or to any board of trustees or public  
 7 corporation or agency of such state created by such state as  
 8 an agency or political subdivision thereof. Said lands may  
 9 be purchased in the quantities set forth in 77-2-307 for use  
 10 by such state, board of trustees, public corporation,  
 11 agency, or political subdivision for educational or  
 12 scientific purposes.

13 (3) State lands located wholly or partially within or  
 14 adjacent to the exterior boundaries of the tribal  
 15 government's reservation may be sold to a tribal government  
 16 as defined in 18-11-102."

17 Section 3. Section 77-2-307, MCA, is amended to read:  
 18 "77-2-307. Limitation on acreage. No (1) Except as  
 19 provided in subsection (2), no person or corporation shall  
 20 be--entitled--to may purchase more than one section of state  
 21 land, and this area shall not include more than 160 acres of  
 22 land susceptible of irrigation.

23 (2) These The limitations in subsection (1) as to area  
 24 and irrigability shall do not apply to:

25 (a) lands within a federal irrigation project wherein

1 the Congress of the United States of America authorizes  
 2 water to be furnished to an area exceeding 160 irrigable  
 3 acres; or  
 4 (b) lands to be sold to a tribal government as  
 5 provided in 77-2-306."

-End-

## APPENDIX F

LC 109      Creating a legislative committee on Indian affairs; providing for the committee's termination in 1991; appropriating funds for the committee.



1 \_\_\_\_\_ BILL NO. \_\_\_\_\_  
2  
3 INTRODUCED BY \_\_\_\_\_  
4  
5 BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS  
6  
7  
8 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A LEGISLATIVE  
9 COMMITTEE ON INDIAN AFFAIRS; PROVIDING FOR THE COMMITTEE'S  
10 TERMINATION IN 1991; APPROPRIATING FUNDS FOR THE COMMITTEE;  
11 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the 1983 Montana Legislature through adoption of House Joint Resolution No. 19 provided for appointment of an eight-member, equally bipartisan Select Committee on Indian Affairs; and

WHEREAS, House Joint Resolution No. 19 directed the Committee to perform a variety of tasks, including holding hearings to promote better understanding between the tribes and public agencies, acting as a liaison between the Indian people and the Legislature, promoting amicable Indian/non-Indian relations, and keeping informed of state-tribal cooperative agreements; and

21 WHEREAS, the Legislature appropriated \$7,000 to the  
22 Committee to fulfill the mandates of its enabling  
23 legislation; and

24 WHEREAS, within this limited budget, the Committee held  
25 five meetings and addressed such topics as involuntary

- 1 commitment of mentally ill tribal members, state-tribal
- 2 cooperative agreements, and negotiation of Indian reserved
- 3 water rights; and

WHEREAS, these meetings were well attended by both tribal representatives and state agency personnel; and

6 WHEREAS, these meetings provided a forum for both  
7 Indian and non-Indian people to discuss their concerns  
8 before a legislative body; and

9 WHEREAS, the Committee succeeded in developing good  
10 rapport with many tribal representatives; and

WHEREAS, the Indian people in Montana have indicated support for appointment of a legislative committee to continue the work of the 1983-1984 Select Committee on Indian Affairs; and

15 WHEREAS, it is in the interest of all Montanans that  
16 Indian/non-Indian communications and relations be enhanced;  
17 and

18 WHEREAS, appointment of a legislative committee on  
19 Indian affairs would enhance Indian/non-Indian  
20 communications, relations, and cooperation.

22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in (sections 1 through 23  
8), "committee" means the committee on Indian affairs 24  
created in (section 2). 25

1 Section 2. Committee on Indian affairs -- appointment  
 2 and composition. (1) There is a committee on Indian affairs.  
 3 (2) The committee consists of four members of the  
 4 senate, appointed by the president of the senate, and four  
 5 members of the house of representatives, appointed by the  
 6 speaker of the house. No more than two members from either  
 7 house may be members of the same party.

8 (3) Appointments must be made before final adjournment  
 9 of a regular session.

10 Section 3. Term of office. Appointments to the  
 11 committee are for 2 years. A member of the committee serves  
 12 until his term of office as a legislator is ended or his  
 13 successor is appointed, whichever occurs first.

14 Section 4. Vacancies. (1) A vacancy occurring during a  
 15 legislative session must be filled in the same manner as the  
 16 original appointment.

17 (2) A vacancy occurring when the legislature is not in  
 18 session must be filled by the selection of a member of the  
 19 appropriate house and political party by the remaining  
 20 members of the committee.

21 (3) An appointment to the committee under this section  
 22 is for the unexpired term of the original member.

23 Section 5. Officers. The committee shall elect one of  
 24 its members as chairman and may elect other officers it  
 25 considers necessary.

1 Section 6. Meetings and compensation. (1) The  
 2 committee shall meet as often as the chairman considers it  
 3 necessary during and between legislative sessions.

4 (2) Committee members are entitled to receive  
 5 compensation and expenses as provided in 5-2-302.

6 Section 7. Staff assistance. The legislative council  
 7 shall provide staff assistance to the committee. The  
 8 legislative council has the same authority of investigation  
 9 and examination and the same authority to hold hearings on  
 10 behalf of the committee as it has for other committees under  
 11 5-11-106 and 5-11-107.

12 Section 8. Duties of the committee. The committee  
 13 shall:

14 (1) seek opinions of and information from Indian  
 15 tribes, Indian tribal organizations, state agencies, local  
 16 governments, non-Indians living on or near Indian  
 17 reservations, and other interested persons and agencies to  
 18 gain insight into Indian/non-Indian relations;

19 (2) hold hearings both on and off reservations to  
 20 promote better understanding between the tribes and public  
 21 agencies and to improve both the Indian peoples' knowledge  
 22 of the structure of state agencies and the legislative  
 23 process and the non-Indian peoples' knowledge of tribal  
 24 government and institutions;

25 (3) encourage and foster participation of Indian

1 people at its meetings;

2 (4) act as an available liaison between the Indian  
3 people and the legislature;

4 (5) encourage tribal-state and tribal-local government  
5 cooperation and otherwise promote amicable Indian/non-Indian  
6 relations; and

7 (6) report its activities, findings, recommendations,  
8 and any proposed legislation to the legislature before each  
9 regular legislative session.

10 Section 9. Termination date. The committee shall  
11 terminate upon the convening of the 52nd legislature in  
12 regular session in 1991.

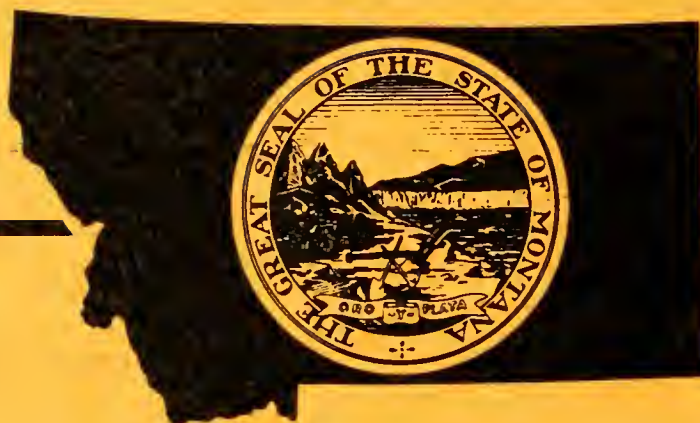
13 Section 10. Appropriation. There is appropriated for  
14 the biennium ending June 30, 1987, \$12,000 from the general  
15 fund to the legislative council for use by the committee on  
16 Indian affairs.

17 Section 11. Effective date. This act is effective on  
18 passage and approval.

-End-







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